

Gilnockie Station

Economic Policy Scrutiny Committee

Pastoral Land Legislation Amendment Act (PLAA)

c/- The Secretary

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Dear Members

Please accept two papers from John and Helen Armstrong of Gilnockie Station with regard the review of the Pastoral Land Act.

Paper A (this letter) comprises three sections, 1. ECC instead of UCC, 2. Application of determined values and 3. An Appeals process covering the whole Act.

Paper B Refers to Section 85D, a permit fee for alternate land use and is under separate cover.

Risk 1. ECC instead of UCC perhaps a drafting error in PLAA.

The PLAA Part 2 Section 3(A) refers to ECC for estimated carrying capacity but in all conversations in the background, the intent was understood to be Unimproved Estimated Carrying Capacity or UECC.

This is because what the pastoralist rents from the government is the biomass in it's natural state, for the purpose of grazing greater animals.

As the Pastoral Estate becomes more developed and improved pastures are added at considerable expense to the pastoralist and the ability to carry more cattle on the improved pastures is increased, using ECC would mean the animals per sqK would be adjusted up on a biomass superior to the natural state - and one that the government has not contributed to the development thereof.

This would apply equally to the higher CC resulting from the use of purchased feed supplementation, which is additional expensive protein and nutrients from that of the deficient natural estate.

In effect, pastoralists, where this applied would be taxed on their improvements, where-as those who did nothing, would not. Producers who provided such improvement would end up carrying a far greater share of the rent burden. It would become a de-facto Improved Estimated Carrying Capacity.

Risk 2. Application.

ITEM 12, Section 54, of the PLAA mentions that the "Agency" must "determine" the CC and that it may conduct a review. Assuming that is the Pastoral Lands Agency, which is the only agency authorised to discuss matters pertaining to leases with any Lessee, have not in the past instructed an estimated CC. They have always "negotiated" a CC to a mutual agreement prior to any official Notification of such.. That philosophy must prevail. There may be small adjustments either up or down from the 2016 datum as land unit mapping becomes more available rather than land system

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mapping. That is where negotiation should apply in accepting the corporate knowledge of the Lessee.

Risk 3. Appeals process.

Such application and definition of the UCC should be allowed to be appealed against or disputed, even on the subject of carrying capacity, say if an incoming Lessee is of a different opinion as that of an outgoing Lessee or for any notification or any other matter including those emanating from either the Act, Minister, Board or a Pastoral Lands Officer. Will the old PLA section 119 process remain? Indeed I do not see where an appeals process is mentioned anywhere in the PLAA. Would disputes be referred to the NTCAT (Civil Appeals Tribunal), which seems to be the modern method of settling any dispute regarding the PLA, rather than referring to, "The Tribunal"? However reference as to the procedures to conduct an appeal should be in the body of the PLAA if it is now to be referred to NTCAT. Presumably a Lessee is able to mount defence against any alleged offence under the Act as per Item 30 Part 13 inserted.. Defending a notification of Carrying Capacity or any other matter does not seem to be mentioned and need not be an offence alleged to be committed by the lessee.

Hopefully the review committee will ensure that such a process will be easily explained, transparent and affordable. Hopefully it will not follow the procedures of the Valuations Act as a hearing with the Tribunal and then applying to the Supreme Court if satisfaction is not gained at the Tribunal, a very costly and onerous business.

It is a fact that under the current PLA some actions regarding Rental are referred to the NT Valuation Act. There have been disputes against many of those actions. Many respondents have not proceeded with their appeal or dispute because of various reasons. The prime reason being the time and cost to proceed and secondly not knowing what the process will entail and being terrified of appearing in court. I.E. Time, Cost and Fear.

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6/10/2017

Armstrong submission Paper (B)

Section 85 Pastoral Land Act

Rental fee Options for Non Pastoral Use (NPU) of Pastoral Leases.

Section 85A refers of the Pastoral Land Act which states that the Pastoral Land Board may grant a permit for NPU subject to Ministerial approval and section 85 D states that the minister may determine a fee for that permits use. Therefore it is the ,permit which allows the NPU use, not the fee as stated in the issues paper.

Re 85 A;- Perusal of the NT Valuation of Lands act notes that the Act remains silent to provide for a double valuation of a piece of Land. That is the Act provides for one Valuation only for land under any type of tenure.

A separate UCV for any parcel of land to be utilised for a different NPU would require that parcel of land to be first subdivided from the parent form of title.

A UCV for rental purposes could then be established provided the land tenure ship of the subdivided land was some form of lease hold. Should it be converted to Freehold no rental fees would apply.

The whole portion of a Pastoral lease will attract its rental based on Pastoral Purposes, including any portion there-of which might be utilised for NPU. This would apply even when there is a fixed structure for the NPU, which might or might not be retained within a specified fixed reference area of use as once that structure is removed the land is still governed and rented under the pastoral Land Act. Other NPU might be non fixed as reference areas even if tillage occurs for that use, which would render it impossible define an area for say a separate UCV..

There cannot be a fee pertaining to UCV until the land is separated to a separate form of tenure from the pastoral lease.

To now consider Section 85D;- There will be high financial reward for government created by NPU with spin off from extra GDP of the venture, extra local employment and taxes and particularly the GST on all input goods and services. Would a Minister regard that as reward enough or would he consider incurring an extra fee for the use of the land other than the already charged for Pastoral Land Rent? That is, is the Minister contemplating double dipping of rental for the land use?

Perhaps the NPU is not designed to recoup much profit but be planning for a capital gain on a later sale of the property, in which case Government will gain significantly on Capital Gains Tax.

Option 1.

An initial registration fee. A high Permit fee could be crippling to the actual development. A nominal permit fee reflecting the actual cost of registration of the NPU permit on the lease would be the easiest to justify and sell to the Industry. On a purely cost recovery basis, provided existing NT Legislation covered cost recovery, the pass on of the registration cost of the permit at initial

registration only would demonstrate that the Government is not providing an extra use to industry at its own, or other taxpayers cost.

Option 2.

An imaginary annual flat rate fee. If this were contemplated for permit use it would be most difficult as there can be no way of specifying either a reference area for its use or a method of relativity to base such a fee against. Even when land is tilled for an NPU it may involve tilling a different area every year.

Such a fee may well be contested as non accountable particularly with regard to relativity and non transparent in its basis.

Option 3.

A fee based on either the forecast or actual income, either profit margin or gross income.

Such a fee would carry large accounting costs for acquittal purposes and would only yield a return on the years which an income is achieved. It is always the case that in the set up years every venture realises little income, especially if a venture is loaded with high input or infrastructure costs. (This long term of setting up is one of the express reasons for the issuance of a thirty year permit.)

Of recent times the cost of surveying and consulting to prepare for NPU has escalated greatly, up to tens of thousands of dollars from nothing just a few years ago..

A fee or tax based on income, may invoke creative accounting on the part of the venturer to legally ameliorate such a tax. therefore it could easily be contested as unreliable on the basis of relativity.

Should a minister wish to claim a fee based on income he may be expressly invited to first contribute directly to the set up cost of the venture, which in many cases in the pastoral and other industries, Governments have done in the past. This has not been volunteered in the issues paper.

Conclusion

The preferred Option of this paper would be Option 1, It would in the fairest manner provide for and promote Industry initiative to expand the use of the Pastoral Sector Lands and provide transparently for tangible benefits to community and Government fiscal balances.

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6/10/2017